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IN THE

Supreme Court of the United States

October Term, 1979

No. ~~79-~~1048

JEFFREY E. CARLSON,
Appellant,

vs.

STATE OF MINNESOTA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

MOTION TO AFFIRM

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Pursuant to Supreme Court Rule 16(1)(c), Respondent, State of Minnesota, moves to affirm the above entitled appeal from the decision of the Minnesota Supreme Court on the grounds that the jurisdictional statement does not present a substantial federal question, and that the jurisdictions below who have ruled on the issue presented have overwhelmingly ruled against the Appellant.

THE OVERWHELMING WEIGHT OF AUTHORITY HAS RULED ADVERSELY TO THE APPELLANT'S CONSTITUTIONAL CLAIMS.

The issue presented by the Appellant for consideration by this Court is whether cocaine is properly scheduled as a Class II Controlled Substance under Minnesota Statute 152.02, Subd. 3(1)(d). He claims that it should properly be scheduled as a Class III Controlled Substance with a correspondingly lesser penalty. The Minnesota Supreme Court has ruled against his claim. *State v. Carlson and Vernon*, 283 NW2d 516 (Aug. 3, 1979).

The Minnesota statute is identical to the federal statute governing the scheduling of Controlled Substances. Federal courts deciding the issue have unanimously ruled adverse to the Appellant's position. Certiorari has been denied by this Court in several of these cases.

A listing of these cases follows:

United States v. Amidzich, 396 F.Supp. 1140, 1147 (E.D. Wisc. 1975);

United States v. Brookins, 383 F.Supp. 1212 (D.N.J. 1974), *summarily affirmed*, 524 F.2d 1404 (3rd Cir. 1975);

United States v. Castro, 401 F.Supp. 120, 126 (N.D. Ill. 1975);

United States v. DiLaura, 394 F.Supp. 770 (D.Mass. 1974);

United States v. Harper, 530 F.2d 829 (9th Cir. 1976), *cert. denied*, 425 US 977 (1976);

United States v. Hobbs, 392 F.Supp. 444 (D.Mass. 1975);

United States v. Kiffer, 477 F.2d 349, 356 (2nd Cir. 1973); *cert. denied*, 414 US 831 (1973);

United States v. Lindelow, 435 F.Supp. 367 (D.Puerto Rico 1977);

United States v. Marshall, 532 F.2d 1279, 1288 (9th Cir. 1976);

United States v. Miller, 387 F.Supp. 1097 (D.Conn. 1975);

United States v. Smaldone, 484 F.2d 311 (10th Cir., 1973), *cert. denied*, 415 US 915 (1974);

United States v. Umentum, 401 F.Supp. 746 (E.D. Wisc. 1975), *aff'd* (issue not raised) 547 F.2d 987 (7th Cir. 1976), *cert. denied*, 430 US 986 (1977).

Appellee therefore requests that this appeal be affirmed without further proceedings. The question presented is not sufficiently substantial to justify the attention of this Court.

Respectfully submitted,

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